

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN TUARDON Y ROSALIA, ACCUSED-APPELLANT.

G.R. No. 225644. March 01, 2017

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the October 29, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 00053, which affirmed with modification, the March 30, 2004 Decision[2] of the Regional Trial Court, Branch 61, Kabankalan City, Negros Occidental (RTC), finding accused-appellant Edwin Tuardon y Rosalia (Tuardon) guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. 99-2257 and of Frustrated Murder in Criminal Case No. 99-2258.

The Antecedents

On May 28, 1999, Tuardon and his co-accused Ronnel Dima-ala y Dimapiles (Dima-ala) were charged before the RTC with murder committed against PO1 Jerry Dagunan (Dagunan) and frustrated murder committed against Edwin T. Flores (Flores). The Informations read:

Criminal Case No. 99-2257

That on or about the 17[th] day of January, 1999, in the City of Kabankalan, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a .45 caliber pistol, with evident premeditation and treachery, conspiring, confederating and helping each other and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shoot one PO1 JERRY DAGUNAN, thereby inflicting injuries upon the body of the latter which caused his death.

CONTRARY TO LAW.[3]

Criminal Case No. 99-2258

That on or about the 17[th] day of January, 1999, in the City of Kabankalan, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a .45 caliber pistol, with evident premeditation and treachery, conspiring, confederating and helping each other and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shoot one EDWIN FLORES y TORTOCION, thereby inflicting injuries upon the body of the latter which would have caused his death; thus, the accused performed all the acts of execution which would have produced the crime of murder as a consequence but, nevertheless, did not produce it by reason of some causes independent of the will of the accused, that is, the timely and able medical assistance rendered to said Edwin Flores y Tortocion which prevented his death.

CONTRARY TO LAW.[4]

On February 21, 2000, Tuardon and Dima-ala were arraigned and both pleaded "not guilty" to the charges. Thereafter, the trial ensued.

Evidence for the Prosecution

The prosecution presented Flores, Eddie Medel (Medel), SPO2 Rafael Gemoto II (SPO2 Gemoto), PO3 Vicente Gemoto, P/Inspector Ramonit A. Javier, Jocelia Dagunan, Dr. Isagani Ayala (Dr. Ayala), and Dr. Ruel Trecho (Dr. Trecho), as its witnesses.[5] Their combined testimonies tended to establish the following:

On January 17, 1999, at around 8:00 o'clock in the evening, during the celebration of the Sinulog Festival of Kabankalan City, Negros Occidental, victims Flores and Dagunan, a police officer of Kabankalan City, were in Medel's kiosk situated at the middle of Kabankalan City Public Plaza. While Flores and Dagunan were drinking and eating, Teody Roca (Teody), Arman Roca (Arman), Dima-ala, and Tuardon, a rebel-returnee, arrived at the kiosk. A few moments later, an altercation ensued between Dagunan and Teody with the former drawing his gun and the latter, pulling out a knife. The confrontation was interrupted after Medel pacified them. Thereafter, Teody, Arman, Dima-ala, and Tuardon immediately left the place, while Flores and Dagunan stayed. After a while, Flores left to urinate. While urinating at a wall, Flores saw Dima-ala handing a black pistol to Tuardon. He went back to the kiosk where he saw Dagunan still eating.[6]

At about 9:30 o'clock in the evening, Dagunan asked Flores to accompany him to the comfort room in the public plaza. While Flores was following Dagunan to the comfort room, Tuardon suddenly rushed in between them. When Dagunan was standing at the main door of the comfort room and in the act of urinating, he was shot by Tuardon, who was situated at the right side and immediately behind the former. Dagunan was hit at the base of his head causing him to fall to the ground. Upon witnessing what transpired, Flores said "Oh." Tuardon, upon noticing Flores, shot him in the chest, which caused him to fall to the ground. Then, Tuardon hurriedly left the place.

Not long thereafter, Tuardon was arrested by SPO2 Gemoto. Both victims were brought to the Gumersindo Garcia Memorial Hospital in Kabankalan City where Dagunan was pronounced dead. Flores, meanwhile, was transferred to Bacolod Provincial Hospital where he was confined and treated.[7]

Dr. Ayala, in a medico-legal report with the sketch attached thereto, revealed that Dagunan was shot at the base of his head through and through causing brain tissue damage, the point of entry being his left-back side, and the point of exit being the right side. Dr. Trecho, on the other hand, issued a medical certificate stating that Flores sustained a gunshot wound with 1 cm. 2[nd] intercostal space 2.I.C.S. AAL through and through level of T6 left area scapular line.[8]

Evidence for the Defense

The defense presented Tuardon himself, his cousin Raul Rosalia (Rosalia), and Teody, as its witnesses. It claimed that Tuardon acted in self-defense. Thus:

On January 17, 1999, at about 5:30 o'clock in the afternoon, Tuardon and his son were at the Kabankalan Public Plaza watching the highlight of the Sinulog Festival. From time to time, Tuardon would join Teody and his companions, including Dima-ala and one Benjie Javier (Javier) in their drinking session at the kiosk of Bikek Gargaritano. At around 7:00 o'clock in the evening, he noticed a commotion at the kiosk of Medel. At a distance of about twelve (12) to fifteen (15) meters, he saw Teody being held by Dagunan and noticed that Javier was able to pacify them. Thereafter, he did not mind them anymore.[9]

Later, Tuardon again joined the group to drink but shortly excused himself to look for his son. While looking for his son, he encountered Rosalia who invited him to go home with him. As they were walking towards the terminal at past 9:00 o'clock in the evening, they passed by a comfort room. Tuardon excused himself to use the comfort room and told Rosalia to just wait for him outside. As he was turning around after urinating, he hit one of the legs

of Dagunan, who had just entered the comfort room. They stared at each other and Dagunan asked him if he knew Teody to which he answered "no." Dagunan got angry with his reply and called him stupid. Tuardon got angry and told Dagunan that he was the stupid one. At this juncture, Dagunan drew his gun on his right side, but Tuardon was able to stop him with his left hand. At this juncture, Dagunan turned around, and Tuardon drew his own gun and shot Dagunan once. Tuardon then went out and tucked his gun. Thereafter, Flores came rushing towards him so Tuardon drew his gun again and shot him. After shooting Flores, he found himself shocked that he had shot someone.[10]

Dima-ala, in his defense, took the witness stand, together with Abelardo Basinilio, Jr., and Engr. Rogelio Diaz, as his witnesses. He denied the charges against him and invoked alibi as his defense. He claimed that he did not hand the gun to Tuardon.

The RTC Ruling

In its March 30, 2004 Decision, the RTC found Tuardon guilty beyond reasonable doubt of murder in Criminal Case No. 99-2257, and frustrated murder in Criminal Case No. 99-2258. Dima-ala, on the other hand, was acquitted in the two cases on reasonable doubt. The trial court was of the view that the prosecution failed to present sufficient evidence of his participation in the commission of the crime either as principal by direct participation or as conspirator.

The RTC dismissed Tuardon's claim of self-defense noting that his version of how the events transpired was inconsistent with the medical findings as to the injury sustained by Dagunan. It further observed that Tuardon's testimony was unclear and inconsistent on how he defended himself.

In convicting Tuardon of murder and frustrated murder, the RTC appreciated the presence of the aggravating circumstance of treachery. It stated that treachery attended the killing of Dagunan as he was shot at the base of his head, suddenly and unexpectedly, while he was in the act of urinating. As to Flores, the trial court noted that he was shot at the chest while unarmed and unprepared. Thus, Dagunan and Flores were not given any opportunity to defend themselves. The dispositive portion of the decision reads:

WHEREFORE, in Criminal Case No. 99-2257, the Court finds accused Edwin Tuardon GUILTY beyond reasonable doubt of the crime of Murder, under Article 248 of the Revised Penal Code as charged in the Information and in Criminal Case No. 99-2258, the Court finds accused Edwin Tuardon GUILTY beyond reasonable doubt of the crime of Frustrated Murder under Article 248 of the Revised Penal Code, in relation to Article 50 thereof, as charged in the Information, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, to indemnify the heirs of the deceased victim PO1 Jerry Dagunan the amount of Fifty Thousand Pesos (P50,000.00) for the crime of murder and an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY, of prision mayor as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS, of reclusion temporal as maximum, to pay the victim Edwin Flores the amount of Thirty Thousand Pesos (P30,000.00) by way of indemnity for the crime of Frustrated Murder and to pay the costs.

Based on reasonable doubt, accused Ronnel Dima-ala is ACQUITTED.

It is ordered that accused Edwin Tuardon be immediately remitted to the National Penitentiary.

It is further ordered that accused Ronnel Dima-ala be immediately released from detention unless charged of other offense.

SO ORDERED.[11]

Aggrieved, Tuardon elevated an appeal before the CA.

The CA Ruling

In its assailed October 29, 2015 Decision, the CA affirmed, with modification, the March 30, 2004 RTC decision. It concurred with the RTC that treachery attended the killing of Dagunan and that Flores was rendered defenseless because of Tuardon's sudden attack. It opined that the injury sustained by Flores could have caused his death had it not been for the timely medical intervention. Thus, the CA concluded that the RTC did not err in convicting Tuardon for murder and frustrated murder. It did not give credence to his claim of self-defense because he failed to establish its elements. The appellate court pointed out that no unlawful aggression was initiated by Dagunan, as it noted that he was then just urinating.[12]

The CA, nevertheless, modified the RTC judgment with respect to the monetary awards.[13] The dispositive portion of the decision reads:

WHEREFORE, premises considered, the instant appeal is hereby DENIED. Accordingly, the assailed Decision dated 30 March 2004 of the Regional Trial Court, Branch 61, 6th Judicial Region, Kabankalan City, Negros Occidental, in Criminal Case Nos. 99-2257 and 99-2258 is hereby AFFIRMED with MODIFICATIONS as follows:

For the murder of PO1 Jerry Dagunan:

- The award of civil indemnity is increased to Php 75,000.00;
- Moral damages in the amount of Php 75,000.00;
- Exemplary damages in the amount of Php 30,000.00; and
- Temperate damages in the amount of Php 25,000.00.

For the frustrated murder of Edwin Flores:

- Civil indemnity is increased to Php 40,000.00;
- Moral damages in the amount of Php 40,000.00;
- Temperate damages in the amount of Php 25,000.00; and
- Exemplary damages in the amount of Php 20,000.00.

Interest on all damages awarded is imposed at the rate of 6% per annum from date of finality of this judgment until fully paid.

SO ORDERED.[14]

Hence, this appeal.

In its Resolution,[15] dated September 14, 2016, the Court required both parties to file their respective supplemental briefs, if they so desired. Both parties, however, opted to adopt the briefs they filed before the CA as their supplemental briefs.[16]

The Position of the Accused

Tuardon insists that he acted in self-defense. He contends that Dagunan was the unlawful aggressor as he attempted to draw his gun after their heated exchange. According to him, shooting Dagunan was the only means available for him to repel his aggression. Tuardon further claims that assuming that he is liable for Dagunan's death and for the injury sustained by Flores, he cannot be convicted of murder and frustrated murder as the qualifying circumstances of treachery and evident premeditation were not present. He claims that when Dagunan insulted him, Dagunan had every reason to expect a reprisal from him, putting himself on guard for any attack.

With respect to the shooting of Flores, Tuardon asserts that when Flores rushed towards him after witnessing what had transpired, he already exposed himself to any possible harm that could befall upon him. Thus, he was forewarned of the impending danger upon himself.[17]

The Court's Ruling

Tuardon did not act in self-defense

In criminal cases, the burden of proof generally lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent. It is a time-honored rule, however, that when the accused admits killing the victim and invokes self-defense as a justifying circumstance, it is incumbent upon him to prove the said circumstance by clear and convincing evidence.[18] Thus, the accused must rely on the strength of his evidence and not on the weakness of that of the prosecution, for even if the latter is weak, it could not be questioned that the accused has admitted the killing.[19]

To successfully claim self-defense, the accused must satisfactorily prove the concurrence of all of its elements. Under Article 11 of the Revised Penal Code (RPC), any person who acts in defense of his person or rights does not incur any criminal liability provided that the following circumstances concur: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. The most important of the three is the element of unlawful aggression because without it, there could be no self-defense, whether complete or incomplete.[20]

As can be gleaned from the records, Tuardon failed to discharge this burden. The Court concurs with the trial court's assessment that Tuardon's claim of self-defense could not be given any credence.

As observed by the RTC, Tuardon's testimony was inconsistent and unclear on how he defended himself. During his direct examination, Tuardon claimed that he shot Dagunan "when Dagunan turned and held his waist and xxx was about to reach for his gun xxx." [21] Tuardon narrated that when Dagunan drew his gun holstered at his right waist, he stopped him by using his left hand; and while he was holding Dagunan, he drew his gun from his holster at his back using his right hand and shot him once. During his cross-examination, Tuardon testified:

COURT:

He was standing beside Patrolman Dagunan. Then you were urinating?

A.

I was finished.

Q.

And then Dagunan was able to urinate?

A.

Yes.

Q.

So, he was beside you?

A.

Yes, he was on my left.

x x x

Q.

When you said he turned, he turned towards you, facing you?

A.

Yes, he turned but he was not able to face me because I was able to hold him at the back.

COURT:

Tell us from what direction?

A.

He turned to the left but he was not able to face me because I was able to hold him at the back.

Q.

So, Gerry Dagunan turned towards you but you hold his gun?

A.

Yes.

Q.

So Dagunan was eventually facing you?

A.

He was not able to turn towards me.

Q.

But you were already holding his gun?

A.

Yes, I have pinned him to the wall.

Q.

But he was not able to reach his gun because of your pinning him to the wall when he turned to you?

A.

Yes, but he was forcing to raise it.

Q.

Then you [shot] him?

A.

Yes, then I [shot] him.[22]

The Court finds Tuardon's story incredible. He claimed that he and Dagunan were standing beside each other while urinating. Dagunan was near Tuardon's left side; meaning, Tuardon was on the right side of Dagunan. From their relative positions, according to Tuardon, Dagunan was about to draw his gun, holstered at his right waist,

when Tuardon stopped him using his left hand. And from this position, Tuardon could certainly pin Dagunan to the wall. It is at this point that the version of the defense ceases to be believable.

If Tuardon's story is to be believed, then the point of entry of the bullet should be at the right side of Dagunan's head. This was, however, belied by the findings of Dr. Ayala in his medico-legal report[23] that Dagunan was shot at the base of his head through and through causing brain tissue damage. Further, as illustrated in the sketch,[24] attached to the medico-legal report, the point of entry of the bullet which killed Dagunan was at the back-left portion of his head and the point of exit was at the right portion of his head. These medico-legal findings are consistent with the version of Flores who testified that:

ATTY. PARREÑO:

Q.

Now, using me as Patrolman Jerry Dagunan in the act of urinating, where was Edwin Tuardon when he shot Jerry Dagunan, will you kindly demonstrated?

INTERPRETER:

As illustrated by the witness, Edwin Tuardon was situated immediately at his left backward pointing the gun at the shoulder level.

ATTY. PARREÑO:

Q.

And that was the time when he fired the shot?

A.

Yes, sir.[25] [Emphases supplied]

Contrary to Tuardon's claim, the prosecution was able to establish that Dagunan was shot from behind while in the act of urinating. This was amply supported by the testimony of eyewitness Flores and by the findings in the medical and death certificates issued relating to Dagunan's death. Thus, there was no unlawful aggression on the part of Dagunan to speak of. As observed by the trial court:

The fact that victim PO1 Jerry Dagunan was shot at the back of his head which caused his death is shown in his Death Certificate (Exhibit "C") and the Sketch of Human Anatomy (Exhibit "C-1", "C-1-a", "C-1-b" and "C-1-c") issued and attested to by Dr. Isagani Ayala to the effect that said victim was shot at the base of his head through and through causing brain tissue damage with powder burns noted.[26]

Moreover, as testified to by Flores, the attack was sudden and unexpected. Tuardon rushed to where Dagunan was and immediately shot him. Under these circumstances, the Court could not imagine how Dagunan could have presented any aggression.

The Court has no reason to doubt Flores' testimony and positive declaration. Jurisprudence dictates that the findings of the trial court on the credibility of witnesses deserve a high degree of respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the appellant.[27] This is especially true in this case considering that the testimony of Flores was corroborated by the medical findings. Thus, the Court finds no reason to deviate from this rule.

Treachery attended the killing of Dagunan

Tuardon insists that the RTC and the CA erred in appreciating the attendance of treachery in the killing of Dagunan. He asserts that his prior heated exchange with Dagunan sufficiently forewarned the latter of any retaliation on his part.

Tuardon's argument fails to impress. Treachery indeed attended the killing of Dagunan.

"There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." [28] The essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend himself, thus ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim. [29]

In this case, the prosecution was able to establish that Tuardon's attack on Dagunan was attended by treachery. Flores, on direct examination, narrated and demonstrated how the attack was effected, thus:

ATTY. PARREÑO:

Q.

So, when you were following him going towards the C.R., have you noticed the presence of Edwin Tuardon?

A.

Yes, sir.

Q.

What was he doing?

A.

While I was following Jerry Dagunan, immediately Edwin Tuardon [rushed] in between us.

Q.

So, in effect Jerry Dagunan was followed by Edwin Tuardon and that you followed. Is that what you said?

A.

Yes, sir.

Q.

Now, was Jerry Dagunan able to enter the C.R.?

A.

Yes, sir, but just at the main door of the C.R.

Q.

Why, the C.R. [was] fenced?

A.

Because of so many people, he just stayed or stood up at the main door of the C.R.

Q.

While Jerry Dagunan was standing at the main door of the C.R., can you recall what happened?

A.

Immediately he was shot up by Edwin Tuardon and I immediately commented "oh."

Q.

Mr. Witness, just answer the question only.

So, Jerry Dagunan was situated at the main door or entrance of the C.R. facing where?

INTERPRETER:

The witness illustrated that Jerry Dagunan was at the oblique side (kilid) of the door of the C.R. and he was in the act of urinating.

ATTY. PARREÑO:

Q.

Now, using me as Patrolman Jerry Dagunan in the act of urinating, where was Edwin Tuardon when he shot Jerry Dagunan, will you kindly demonstrated?

INTERPRETER:

As illustrated by the witness, Edwin Tuardon was situated immediately at his left backward pointing the gun at the shoulder level.

ATTY. PARREÑO:

Q.

And that was the time when he fired the shot?

A.

Yes, sir.[30] [Emphases supplied]

From the foregoing, it is evident that the attack by Tuardon was sudden and unexpected without the slightest provocation on the part of Dagunan. Tuardon immediately pursued the unsuspecting Dagunan when the latter was on his way to relieve himself. Tuardon then executed his felonious deed against Dagunan while he was in the act of urinating and with his back towards his aggressor. Under such circumstances, there was no way that Dagunan could have defended himself. Clearly, he could not have expected that he would be attacked. In short, Tuardon, in executing the crime, employed means, methods or forms which tend, directly and specially, to ensure its execution, without risk to himself arising from the defense which Dagunan might make. The attack was deliberate, sudden and unexpected. The attendance of treachery in the killing of Dagunan could not, therefore, be denied.

In view of the presence of the qualifying circumstance of treachery, the crime committed by Tuardon is murder under Article 248 of the RPC, which is punishable by reclusion temporal, in its maximum period, to death. There being no other aggravating or mitigating circumstances, the RTC and the CA were correct in imposing the penalty of reclusion perpetua.[31]

No Treachery with respect to the Attack on Flores

The Court, however, finds merit in Tuardon's contention that he could not be convicted of frustrated murder in the

shooting of Flores.

Both the RTC and the CA classified Tuardon's sudden attack on Flores as frustrated murder because the latter was unarmed, unprepared, and defenseless. The fact, however, that the victim was unarmed at the time of the attack does not make the same treacherous.[32] In the same vein, the mere suddenness and unexpectedness of the assault does not amount to treachery.[33] As previously discussed, the attack must be deliberate and without warning and the means adopted to carry it must have been purposely sought to ensure the success of the sinister deed.

In this case, evidence for both the defense and the prosecution would show that the shooting of Flores, as well as the means to carry it, was neither unexpected nor consciously adopted by Tuardon. As regards his shooting, Flores narrated:

Q.

Now, when Patrolman Jerry Dagunan fell on the floor, what did you do?

A.

I commented "oh what happened to Patrolman Jerry Dagunan" he turned his back and then he shot me.[34]

This is essentially similar to Tuardon's account where he said:

ATTY. TABINO:

Q.

What happened after you shot Jerry Dagunan?

A.

After I shot him I went out and put on my gun.

Q.

Then, what happened after that?

A.

And his companion while I was on the door was running towards me.

Q.

What happened after that?

A.

Since I saw him running towards me I again draw my gun and shoot him.[35]

The testimonies of Flores and Tuardon disclose that the latter's mode of attack on the former could not have been consciously adopted. Indeed, while the attack was sudden, it was evidently done on impulse - Tuardon shot Flores only because the latter was rushing towards him. The shooting was evidently not deliberate as Flores was not at the scene earlier.

Considering that no treachery or any other qualifying aggravating circumstance attended the shooting of Flores, Tuardon can only be convicted of the crime of frustrated homicide under Article 249, in relation to Article 50 of the RPC.

As to the penalty to be imposed, the Court, in *Ibanez v. People*,^[36] explained in this wise:

Article 249 of the Revised Penal Code provides that the imposable penalty for homicide is reclusion temporal. Article 50 of the same Code states that the imposable penalty upon principals of a frustrated crime shall be the penalty next lower in degree than that prescribed by law for the consummated felony. Hence, frustrated homicide is punishable by prision mayor. Applying the Indeterminate Sentence Law, there being no aggravating or mitigating circumstances present in this case, the minimum penalty to be meted on the petitioners should be anywhere within the range of six (6) months and one (1) day to six (6) years of prision correccional and the maximum penalty should be taken from the medium period of prision mayor ranging from eight (8) years and one (1) day to ten (10) years. xxx.[37]

Appropriate Monetary Awards

Jurisprudence is settled that when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[38] In *People v. De Jesus*,[39] the Court held that the award of P25,000.00 as temperate damages in homicide or murder cases was proper when the actual expenses incurred due to the death of the victim were not satisfactorily proven.

In *People v. Jugueta*,[40] the Court summarized the amounts of damages which may be awarded for different crimes. In the said case, the Court held that for the crime of murder, where the penalty imposed is reclusion perpetua, the following amounts may be awarded: (1) P75,000.00, as civil indemnity; (2) P75,000.00, as moral damages; and (3) P75,000.00, as exemplary damages. On the other hand, for the crime of frustrated homicide, the following amounts may be awarded: (1) P30,000.00, as civil indemnity; and (2) P30,000.00, as moral damages.

All monetary awards shall earn interest at the rate of six (6) percent per annum reckoned from the finality of this decision until fully paid.[41]

WHEREFORE, the October 29, 2015 Decision of the Court of Appeals in CA-G.R. CR HC No. 00053 is hereby MODIFIED to read as follows:

In Criminal Case No. 99-2257, finding accused Edwin Tuardon GUILTY beyond reasonable doubt of the crime of Murder, under Article 248 of the Revised Penal Code, the Court sentences him to suffer the penalty of reclusion perpetua. Further, accused Edwin Tuardon is hereby ordered to indemnify the heirs of the deceased PO1 Jerry Dagunan the following: (i) P75,000.00, as civil indemnity; (ii) P75,000.00, as moral damages; (iii) P75,000.00, as exemplary damages; and (iv) P25,000.00, as temperate damages.

In Criminal Case No. 99-2258, finding accused Edwin Tuardon GUILTY beyond reasonable doubt of Frustrated Homicide, under Article 249, in relation to Article 50 of the Revised Penal Code, the Court sentences him to suffer the penalty of imprisonment ranging from Six (6) Years of Prision Correccional, as minimum, to Eight (8) Years and One (1) Day of Prision Mayor, as maximum; and to indemnify Edwin Flores the following: (i) P30,000.00, as civil indemnity; (ii) P30,000.00, as moral damages; (iii) P20,000.00, as exemplary damages; and (iv) P25,000.00, as temperate damages.

All monetary awards shall earn interest at the rate of six (6) percent per annum reckoned from the finality of this decision until fully paid.

SO ORDERED.

Carpio, Acting C. J. (Chairperson), Velasco, Jr.,[*] and Peralta, JJ., concur.
Leonen, J., on official leave.

[*] Per Special Order No. 2416-U dated January 4, 2017.

- [1] Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap, concurring; rollo, pp. 6-19.
- [2] Penned by Presiding Judge Henry D. Aries; CA rollo, pp. 134-153.
- [3] Records, p. 1.
- [4] Id. at 245.
- [5] CA rollo, p. 136.
- [6] Id. at 135-136.
- [7] Id. at 136.
- [8] Id. at 140.
- [9] Id. at 137.
- [10] Id. at 138.
- [11] Rollo, p. 153.
- [12] Id. at 13-15.
- [13] Id. at 16-17.
- [14] Id. at 18.
- [15] Id. at 25.
- [16] Id. at 27-29; 33-34.
- [17] Id. at 251-260.
- [18] *People of the Philippines v. Samson*, G.R. No. 214883, September 2, 2015.
- [19] *People of the Philippines v. Delima and Areo*, 452 Phil. 36, 44 (2003).
- [20] *Flores v. People of the Philippines*, 705 Phil. 119 (2013).
- [21] Rollo, p. 248.
- [22] TSN of Edwin Tuardon, p. 51-54, April 23, 2003.
- [23] Records, p. 9.
- [24] Id. at 10.
- [25] TSN of Edwin Flores, March 21, 2000.
- [26] CA rollo, p. 140.
- [27] *People of the Philippines v. Castellano*, 427 Phil. 309, 326-327 (2002).
- [28] REVISED PENAL CODE, Article 14, Paragraph 16.
- [29] *People of the Philippines v. Samson*, 427 Phil. 248, 262 (2002); *People of the Philippines v. Vallespin*, 439 Phil. 816, 824 (2002).

- [30] TSN of Edwin Flores, March 21, 2000.
- [31] REVISED PENAL CODE, Article 64, par. 1.
- [32] People of the Philippines v. Dagani, 530 Phil. 501, 520 (2006).
- [33] People of the Philippines v. Watamama, 13A Phil. 673, 682 (2014).
- [34] TSN of Edwin Flores, March 21, 2000.
- [35] TSN of Edwin Tuardon, April 23, 2003.
- [36] Ibanez v. People, G.R. No. 190798, January 27, 2016.
- [37] Id.
- [38] People of the Philippines v. Dela Rosa, 711 Phil. 239, 249 (2013).
- [39] 655 Phil. 657, 676 (2011).
- [40] G.R. No. 202124, April 5, 2016.
- [41] Nacar v. Gallery Frames, 716 Phil. 267, 283 (2013).

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